Rabiah bt Ani v Samsi bin Hj Hasim (t/a Syarikat Perniagaan Jaya) & Anor

HIGH COURT (MUAR) — CIVIL SUIT NO 22–59 OF 2000
UMI KALTHUM JC
22 MARCH 2010

Land Law — Charge — Validity of — Plaintiff alleged execution of charge obtained by fraud, misrepresentation, undue influence and negligence — Whether allegation proved — Whether bare denial — Whether plaintiff bound by signed documents

The plaintiff was the joint owner of an undivided piece of land known as Geran No 15087, Lot 2631, Mukim Bandar Maharani, Daerah Muar, Negeri Johor ('the land') together with two of her brothers by the name of Abdul Taib bin Ani ('Abdul Taib') and Ibrahim bin Ani. The second defendant had approved a financing facility of RM210,000 under the 'Kemudahan Pembiayaan Modal Pusingan Al Murabahah AL-MWCF Berputar' ('al murabahah facility') in favour of the first defendant and a refinancing facility under the al-bai bithaman ajil facility ('al-bai bithaman ajil facility') of RM30,000 to the plaintiff and her two brothers for the purpose of repairing a house erected on the said land. The financing facilities were secured by two charges. The plaintiff denied knowledge of the charges and said that she only discovered about the existence of the charges when the land was to be auctioned off by the second defendant. The plaintiff claimed that the second defendant had committed fraud, misrepresentation, undue influence and negligent by reason of which had caused her to execute both charges. Thereupon the plaintiff filed a civil suit against the defendants seeking, inter alia, for: (a) a declaration that the charge Perserahan No 34596/96, Jilid 3610, Folio 58 ('the first charge') was wrongful, null and void and with no effect; (b) a declaration that the charge Perserahan No 41033/96, Jilid 3634, Folio 60 ('the second charge') was wrongful, null and void and with no effect; and (c) damages for cheating, misrepresentation, undue influence and negligence. However, the action was subsequently pursued against only the second defendant upon the demise of the first defendant against whom the plaintiff successfully obtained a judgment in default of appearance. The second defendant denied all the allegations of wrong doing.

Held, dismissing the claim with costs:

(1) Based on the documents, the court found that the plaintiff had lied in denying that the signatures on the documents pertaining to the

al-murabahah facility as well as some of the documents pertaining to the al-bai bithaman ajil facility, as hers. From even a cursory look at all the signatures admittedly signed by the plaintiff and comparing them with all those which she had denied signing, the court was of the view that all the signatures were hers. Moreover, it does not seem logical for her to have admitted signing some of the documents and denying signing the others, more so when the documents had direct bearing on the al-bai bithaman ajil facility. Further, the truth of her testimony in court was questionable in view of the contradictions in her testimony (see paras 11–12).

(2) In the circumstances the plaintiff had failed to prove that the second defendant had committed, inter alia: (a) any act of fraud and conspiracy between the first and second defendants to defraud her; (b) misrepresented any facts to her; (c) had unduly influenced her and (d) was negligent in failing to take proper action in accordance with law by allowing the first defendant to use the plaintiff's share of the land as charge in respect of the financial facilities (see para 14(a)–(d)).

(3) It was clear that the fraudulent acts or conspiracy to defraud the plaintiff was the result of the actions of the first defendant together with Abdul Taib. The acts of the first defendant could not in any way be attributable to the second defendant. Further, the plaintiff was unable to link the acts of the first defendant to that of the second defendant other than making a bare assertion in her pleadings that the first and second defendants had conspired to defraud her (see para 15).

(4) As the plaintiff had signed all the relevant documents, she could not deny being bound by them by reason of fraud, misrepresentation, undue influence and negligence. In the circumstances, it was found that the plaintiff was negligent when she purportedly signed the blank forms and could not avail herself with the plea of non est factum (see paras 16 & 19).

[Bahasa Malaysia summary

Plaintif merupakan pemilik bersama sebidang tanah yang tidak dibahagikan dikenali sebagai Geran No 15087, Lot 2631, Mukim Bandar Maharani, Daerah Muar, Negeri Johor (tanah tersebut) bersama dua abangnya bernama Abdul Taib bin Ani ('Abdul Taib') dan Ibrahim bin Ani. Defendan kedua telah meluluskan kemudahan kewangan berjumlah RM210,000 di bawah 'Kemudahan Pembiayaan Modal Pusingan Al Murabahah AL-MWCF Berputar' ('kemudahan al murabahah') bagi pihak defendan pertama dan kemudahan pembiayaan semula di bawah kemudahan al-bai bithaman ajil ('kemudahan al-bai bithaman ajil') berjumlah RM30,000 kepada plaintif dan dua abangnya bagi tujuan membaiki rumah yang dibina atas tanah tersebut. Kemudahan-kemudahan kewangan itu telah dijamin oleh dua gadaian. Plaintif telah menafikan pengetahuan tentang gadaian-gadaian tersebut dan

menyatakan bahawa dia hanya mengetahui tentang kewujudan gadaian-gadaian tersebut apabila tanah itu dilelong kepada defendan kedua. Plaintif mendakwa bahawa defendan kedua telah melakukan fraud, memberi gambaran yang salah, memberi pengaruh tidak berpatutan dan cuai yang menyebabkannya memasukkan kedua-dua gadaian tersebut. Seterusnya plaintif telah memfailkan guaman sivil terhadap defendan-defendan memohon, antara lain, untuk: (a) deklarasi bahawa gadaian Perserahan No 34596/96, Jilid 3610, Folio 58 ('gadaian pertama') adalah salah, terbatal dan tidak sah dan tidak berkesan; (b) deklarasi bahawa gadaian Perserahan No 41033/96, Jilid 3634, Folio 60 ('gadaian kedua') adalah salah, terbatal dan tidak sah dan tidak berkesan; dan ganti rugi untuk penipuan, gambaran salah, pengaruh tidak berpatutan dan kecuaian. Walau bagaimanapun, tindakan itu selanjutnya hanya telah diteruskan terhadap defendan kedua setelah kematian defendan pertama yang mana plaintif telah berjaya memperoleh penghakiman ingkar kehadiran. Defendan kedua telah menafikan semua dakwaan salah laku.

Diputuskan, menolak tuntutan dengan kos:

(1) Berdasarkan dokumen-dokumen, mahkamah mendapati plaintif menipu kerana menafikan bahawa tandatangan-tandatangan atas dokumen-dokumen berkaitan kemudahan al-murabahah dan juga beberapa dokumen berkaitan kemudahan al-bai bithaman, adalah olehnya. Dengan sekadar melihat sepintas lalu kepada semua tandatangan yang diakui telah ditandatangani oleh plaintif dan membandingkan dengan semua tandatangan yang telah dinafikannya, mahkamah berpendapat bahawa semua tandatangan tersebut adalah olehnya. Bahkan, tidak logikal untuknya mengakui telah menandatangani semua dokumen-dokumen dan menafikan telah menandatangani yang lain, lebih-lebih lagi apabila dokumen-dokumen itu berkaitan langsung dengan kemudahan al-bai bithaman ajil tersebut. Selanjutnya, kebenaran testimoninya di mahkamah boleh dipersoalkan berdasarkan percanggahan dalam testimoninya (lihat perenggan 11–12).

(2) Dalam keadaan berikut plaintif telah gagal membuktikan bahawa defendan kedua telah melakukan, antara lain: (a) apa-apa perbuatan fraud dan konspirasi antara defendan-defendan pertama dan kedua untuk melakukan fraud terhadapnya; (b) memberi gambaran yang salah tentang apa-apa fakta kepadanya; (c) mempengaruhinya secara tidak berpatutan; dan (d) cuai kerana gagal mengambil tindakan sewajarnya menurut undang-undang dengan membenarkan defendan pertama menggunakan bahagian tanah plaintif sebagai gadaian berhubung kemudahan-kemudahan kewangan (lihat perenggan 14(a)–(d)).

(3) Jelas bahawa tindakan-tindakan fraud atau konspirasi untuk melakukan fraud plaintif adalah akibat tindakan-tindakan defendan pertama bersama Abdul Taib. Tindakan-tindakan defendan pertama tidak boleh

dalam apa cara dianggap berpunca daripada defendan kedua. Bahkan, plaintif tidak dapat mengaitkan tindakan-tindakan defendan pertama dengan tindakan-tindakan defendan kedua selain daripada membuat dakwaan kosong dalam plidingnya bahawa defendan-defendan pertama dan kedua telah berkomplot untuk melakukan fraudnya (lihat perenggan 15).

(4) Memandangkan plaintif telah menandatangani semua dokumen-dokumen berkaitan, beliau tidak boleh menafikan terikat dengan mereka atas alasan fraud, salah nyata, pengaruh tak wajar dan kecuaian. Dalam keadaan ini, ia didapati bahawa plaintif berlaku cuai apabila beliau menandatangani borang-borang kosong seperti diperkatakan dan beliau tidak boleh menggunakan rayuan non est factum (lihat perenggan 16 & 19).]

Notes

For cases on validity of charge, see 8(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 2599–2610.

Cases referred to

Chai Then Song v Malayan United Finance Bhd [1993] MLJU 128; [1993] 2 CLJ 640, HC (refd)

Malaysian Assurance Alliance Bhd v Yeam Sai Ming & Ors [1996] 5 MLJ 345, HC (refd)

Saunders (Executrix of the estate of Rose Maud Gallie (deceased)) v Anglia Building Society (formerly Northampton Town and County Building Society) [1970] 3 All ER 961, HL (refd)

Manjeet Kaur Nijar (Nijar & Nijar) for the plaintiff.
Syed Faisal bin Syed Abdullah (Syed Faisal & Co) for the defendants.

Umi Kalthum JC:

THE SUIT

[1] The plaintiff filed a civil suit against the defendants seeking the following orders:

(a) a declaration that the charge Perserahan No 34596/96, Jilid 3610, Folio 58 ('first charge') is wrongful, null and void and with no effect;

(b) a declaration that the charge Perserahan No 41033/96, Jilid 3634, Folio 60 ('second charge') is wrongful, null and void with no effect;

(c) damages for cheating, misrepresentation, undue influence and negligence;

(d) general and special damages;

(e) interests; and

(f) costs.

BACKGROUND

[2] The plaintiff had filed a certificate of non-appearance of the first defendant on 1 November 2001 (see IP(2), pp 1–2) and obtained a judgment in default of appearance against the first defendant on 16 August 2004 (see IP(2), p 3). After assessment of damages and costs was conducted by the learned deputy registrar on 30 September 2004, the learned deputy registrar ordered the first defendant to pay damages for the sum of RM221,255.95 (as at 29 July 2004) to the plaintiff with interests and costs (see IP(2), pp 4–5). The first defendant failed to make the said payment to the plaintiff and had passed away on 16 July 2005. This led the plaintiff to pursue her action against the second defendant.

FACTS

[3] The plaintiff is the joint owner of an undivided piece of land known as Geran No 15087, Lot 2631, Mukim Bandar Maharani, Daerah Muar, Negeri Johor ('the said land') together with two of her brothers by the name of Abdul Taib bin Aini ('Abdul Taib') and Ibrahim bin Ani.

[4] The second defendant had approved a financing facility of RM210,000 under the 'Kemudahan Pembiayaan Modal Pusingan Al Murabahah (AL-MWCF Berputar)' ('al murabahah facility') (IDD, pp 1–23) in favour of the first defendant and a refinancing facility under the al-bai bithaman ajil facility ('al-bai bithaman ajil facility') of RM30,000 to the plaintiff and her two brothers Abdul Taib and Ibrahim for the purpose of repairing a house erected on the said land (IDD, pp 44–48). The security for both financing facilities is in the form of the first charge and the second charge respectively. Both the charges and all the security documents in IDD were prepared by a solicitor from the second defendant's panel of solicitors chosen by the customers respectively.

[5] Around October 2000, the plaintiff claimed that she came to know the said land would be auctioned of when the second defendant filed a foreclosure action in the Muar High Court vide Originating Summons No 24(HT)-377 of 1998. Thereupon the plaintiff made several enquiries with the second defendant and the land office. She then discovered the existence of the two said charges.

[6] The plaintiff claimed that the second defendant had committed fraud, mispresentation, undue influence and negligent by reason of which had caused her to execute both charges.

[7] The second defendant in its amended statement of defence (IP, pp 15–21) denied all allegations of wrong doing and proceeded to lay out the facts leading to the issuance of the letters of offers for the said financing facilities and the security documents as contained in IDD which were executed by the plaintiff and her two brothers.

BURDEN OF PROOF

[8] It is trite law that in civil suits, the burden of proof lies on the plaintiff to prove her case. Based on her testimony, the plaintiff stated that on or around May 1996, the first defendant together with her brother Abdul Taib went to see her in Gombak, Selangor to ask her to sign several forms. She alleged that the first defendant informed her that Abdul Taib wanted to assist him (the first defendant) in his petrol station business in Muar, Johor and had agreed to charge his share of the said land to the second defendant and that the plaintiff was required to sign the various documents presented to her as she is also a co-owner of the said land. She unequivocally stated that she signed the said forms without reading them at her house in Gombak because she trusted her brother Abdul Taib.

[9] During cross-examination, when learned counsel for the second defendant put to her that Abdul Taib and the first defendant did not force her to sign the said documents, she ingenuously stated that as the first defendant asked her to sign them, so she did, even though she did not know him before then and had signed those documents the second time she saw the first defendant. She also disagreed with learned counsel for the second defendant's suggestion that the first defendant never threatened her if she did not sign the documents. When asked further what was she being threatened with, she replied the threat was to her brother, and immediately added she did not know. When it was suggested to her that she could have refused to sign the said documents, she again ingenuously stated she did not have the liberty to refuse to sign them as Abdul Taib had signed them. When it was suggested to the plaintiff that she did not refuse to sign the documents, and had in fact signed the documents straightaway, the plaintiff disagreed with the suggestion. When she was then asked how she had disagreed, she replied she just kept quiet. She also disagreed, without saying more, with the suggestions that she could have asked the first defendant and Abdul Taib for more time to read and understand the said documents but that she did not do so. At this stage of the cross-examination, the court had noted that the plaintiff had been advised by the court several times to be careful in answering the questions posed and not to cavalierly answer the questions by saying 'I don't agree'.

[10] Even though the plaintiff tried to deny knowing the reason why the first defendant and Abdul Taib went to see her in Gombak, upon further

questioning she finally relented by saying that she became aware of their intentions during the second time they went to see her, whereby the first defendant told her he wanted to 'make' a charge in respect of Abdul Taib's share of the said land only. After becoming aware of their intentions, the plaintiff had agreed to sign the said documents.

[11] It is interesting to note that the plaintiff seemed to be selective in admitting, except for pp 92–93 IDD, signatures found in documents pertaining to the al-bai bithaman ajil facility as hers (pp 48, 50, 55–58, 68–71, 73, 76–91) and denying the signatures found in documents pertaining to the al-murabahah facility (pp 24–42, IDD) as hers. Her said admission seemed to coincide with her belief that her brother Abdul Taib had not defaulted in the monthly payments of the loan he had taken out with the second defendant in respect of the second charge (see answer to question 17, P1). After having perused all the said documents in IDD, especially the so-called plaintiff's signatures, I find that the plaintiff had lied in denying having signed the documents pertaining to the al-murabahah facility as well as the documents found on pp 92–93 of IDD. From even a cursory look at all the signatures admittedly signed by the plaintiff and comparing them with all those which she denied signing, I am of the considered view that all the signatures were made by her. Moreover, it does not seem logical for her to have admitted signing the documents on pp 48, 50, 55–58, 68–71, 73, 76–91 of IDD and denying signing them on pp 92–93 when the documents on pp 92–93 have a direct bearing on the al-bai bithaman ajil facility.

[12] I moreover find that the plaintiff had made several material contradictions in her testimony. Other than in regard to her signatures on the said documents:

(a) in her answer to question 15, P1, she stated that she had made several enquiries at the Muar Land Office and with the second defendant when Abdul Taib told her about the second defendant auctioning off the whole said land, and yet during cross-examination when she was asked when did she make the enquiries with the second defendant, she replied she did not make any enquiries with the second defendant;

(b) she stated in her statement of claim, para 7(d), and her answer to question 17, P1 that Abdul Taib did not fail to pay the monthly loan repayments to the second defendant, but after questions were led by learned counsel for the second defendant on whether Abdul Taib had shown her all the payment receipts he had made to second defendant or had telephoned her to inform her that he had done so after each repayment, the plaintiff finally admitted that in reality she did not know whether Abdul Taib had paid the monthly repayments or not; and

(c) during cross-examination, she disagreed with the suggestion that she did give her approval in writing to the second defendant for her and her two brothers to charge to the second defendant the said land, and yet subsequently she admitted the signatures on pp 73, 76–91 of IDD, being the charge documents, were hers.

[13] These contradictions serve to bring home the point that the plaintiff in trying to deny any knowledge of the documents she was asked to sign, let alone about the facilities in regard to which the said land was charged, found herself caught in a bind. In short, the truth of her testimony in court is questionable.

[14] Based on her testimony, I find that the plaintiff has failed to prove that the second defendant had through its actions or inaction:

(a) committed any act of fraud, let alone a conspiracy between the first defendant and the second defendant to defraud her (see para 10, statement of claim);

(b) misrepresented any facts to her;

(c) had unduly influenced her; and

(d) was negligent in failing to take proper action in accordance with law by allowing the first defendant to use the plaintiff's share of the said land as charge in respect of the said financial facilities (para 11, statement of claim).

[15] What becomes clear is if there were any fraudulent acts or conspiracy to defraud the plaintiff, it was as a result of the actions of the first defendant together with Abdul Taib, the plaintiff's brother. As far as the second defendant was concerned, as long as all its conditions for the loan facilities had been met by its 'customers', namely the first defendant in respect of the al-murabahah facility, and the plaintiff, Abdul Taib and Ibrahim in respect of the al-bai bithaman ajil facility, the said loan facilities were granted and disbursed in accordance with the respective agreements signed. The acts of the first defendant can in no way be attributable to the second defendant. The plaintiff merely made a bare assertion in her pleadings that the first defendant and the second defendant had conspired to defraud her. She was unable to link the acts of the first defendant to that of the second defendant other than to point out 'defects' to be found in the documents signed by her under request by the first defendant as well as certain actions which were not in accordance with the normal procedures followed by the second defendant. The so-called defects are as follows:

(a) it was submitted by learned counsel for the plaintiff that during cross-examination SD1 had stated that when the application for a loan facility by way of a third party charge was approved by the second defendant, an offer letter would be issued, in this case to the first defendant. That SD1 further stated that a copy of the offer letter on pp 1–2 of IDD would also be required to be sent to the landowners. Based on the notes of evidence recorded by me, I have noted SD1 as stating as follows:

> Dalam kes ini terdapat third party charge. Surat tawaran telah dikeluarkan kepada ketiga-tiga penama dalam kes ini, iaitu Puan Rabiah bte Ani, Abdul Taib bin Ani, Ibrahim bin Ani. Selepas surat tawaran dikeluarkan dan tawaran diterima, pihak Bank akan arahkan panel peguam untuk menguruskan documentation untuk perjanjian pinjaman.

SD1's testimony here is consistent with his testimony during examination-in-chief vis question 12, D2 as follows:

> 12 Rujuk IDD muka surat 44–48. Apakah dokumen ini? Ini adalah surat tawaran bertarikh 04/06/1996 kepada ketiga-tiga tuan tanah bagi kemudahan Pembiayaan Al-Bai Bithaman n Ajil sebanyak RM30,000.000 bagi membiayai kos baikpulih rumah yang tersedia ada atas Geran 15087 Lot 2631.

SD1 did not state that a copy of the offer letter to the first defendant would also be required to be sent to the landowners/the chargors. All that SD1 stated was, after being referred to pp 1–2, IDD:

> Ya, inilah surat tawaran yang dimaksudkan untuk third party charge kepada Hj. Samsi. Dalam surat ini tidak disebut nama pemilik tanah.

I therefore find learned counsel was in error in pointing out this 'failure' on the part of the second defendant and its implications;

(b) it was submitted by learned counsel for the plaintiff that vide the testimony of SD1, corroborated by SD2, once a loan was approved by the bank, a lawyer's firm on the bank's panel would prepare the documentation for the loan and that SD1 agreed that the documents would have to be signed in the lawyer's firm and the documentation cannot be taken out of the lawyer's firm. In this case, the loan documentation was signed by the plaintiff not in the lawyer's firm. The plaintiff had conceded that she knew that the charges had to be executed before a lawyer and yet she chose to execute the same in her house without the presence of a lawyer. In view of the fact that the plaintiff had made a choice to do so she cannot now use this fact to show that there was a conspiracy between the first defendant and the second defendant to get her to sign the documents. Neither can she now claim that the second defendant owed her a duty of care to ensure that she did sign the said documents before a lawyer. She is after all an adult and of sane mind;

(c) the plaintiff took issue with the fact that all the charge documents on pp 24–26, Annexure pp 28–41; pp 72–90; property purchase agreement/novation agreement pp 51–58; property sale agreement/sale agreement cum assignment pp 59–71 of IDD as well as other documents in the second defendant's bundle of documents, state the address of the three owners of the said land as at 'Sekolah Menengah Dato' Sri DiRaja, Muar, Johor'. To the plaintiff, this showed the second defendant to be negligent in not ensuring the correct address of the three said land owners, since she had always resided at Gombak at all material times. According to the plaintiff, the said address was the address of the school where Abdul Taib used to work. The following excerpt is what SD1 had to say about this issue:

> Alamat surat menyurat adalah berdasarkan permintaan pelanggan. Walaupun alamat di Sekolah tetapi ianya merupakan alamat yang mudah bagi mereka menerima surat-menyurat itu.

I therefore find no merit in this complaint. If the second defendant's customers had chosen a school address to be their mailing address, the same customers cannot now complain that there had been a breach of duty on the second defendant's part to ensure a proper/correct address be stated into the documents;

(d) the plaintiff also took issue with the fact that she was stated in the charge documents as being a 'pegawai kerajaan' whereas she is only a housewife. The charge documents also stated all the three said land owners as 'berkahwin' whereas according to the plaintiff Abdul Taib is a bachelor. The plaintiff was of the view that since the law firm engaged by the second defendant to draw up all the legal documentation for the second defendant and acted on the instructions and information given by the second defendant, the law firm was therefore an agent of the second defendant. Any negligence on the part of the law firm would be attributable to the second defendant. It is very difficult for me to accept, without more, that the second defendant, being a reputable Islamic Bank in Malaysia, of which I take judicial notice, would have concocted up a misinformation as to the status of the plaintiff and Abdul Taib. What was the more probable scenario was that the first defendant together with Abdul Taib had given the said information to the second defendant who then transmitted it to the law firm to process the loan and other documentation. Moreover, it was too late for the plaintiff to now raise this issue since she saw it fit to sign allegedly blank charge documents. That being the case, I do not see this issue as being an act of negligence by the second defendant. Instead, the plaintiff ought to have taken up this issue against the first defendant and Abdul Taib. This is more so when the plaintiff admitted that her brother Abdul Taib had cheated her. I certainly do not see this issue as strengthening the plaintiff's case of fraud,

misrepresentation, negligence and undue influence. I find learned counsel for the plaintiff's submission that the first defendant and Abdul Taib were acting as agents of the second defendant with dishonest intention, fraudulent etc as an absurdity in the circumstances of this case and I will not deal with it further;

(e) with regard to the two letters of demand in IDD2, whereby the first was to the first defendant, carbon copied to the plaintiff and her two brothers (pp 1–2, IDD2) and the second was to the plaintiff and her two brothers (pp 4–7, IDD2), in both instances the certificate of posting on p 3 in regard to the earlier letter and the AR card in respect of the latter letter were only in Abdul Taib's name at the same address as in the documentation. This, according to the plaintiff, was further act of negligence by the second defendant. With regard to the issue of the address, I have already dealt with it earlier. As for the two letters of demand not being received by the plaintiff and Ibrahim, in as much as this was regrettable, one must remember that the plaintiff, Abdul Taib and Ibrahim are siblings using the same address and in all probability it was assumed by the second defendant that when Abdul Taib received the letters, he would have naturally informed the other two of his siblings. The failure of Abdul Taib to do so was yet another act of failure on Abdul Taib's part against the plaintiff and Ibrahim and the second defendant cannot be wholly blamed for this.

[16] Since I have made the finding of fact that the plaintiff had signed all the relevant documents, the plaintiff cannot now deny being bound by them by reason of fraud, misrepresentation, undue influence and negligence. In the House of Lords case of *Saunders (Executrix of the estate of Rose Maud Gallie (deceased)) v Anglia Building Society (formerly Northampton Town and County Building Society)* [1970] 3 All ER 961, it was held that the plea of non est factum ('it is not his deed') is unlikely to be available to a person who signed a document without informing himself of its meaning, The burden of establishing a plea of non est factum falls on the party seeking to disown the document and that party must show that in signing the document he acted with reasonable care. Carelessness on the part of the person signing the document would preclude him from later pleading non est factum on the principle that no man may take advantage of his own wrong.

[17] *Saunders*' case has been applied by the Malaysian courts in numerous cases. See *Malaysian Assurance Alliance Bhd v Yeam Sai Ming & Ors* [1996] 5 MLJ 345 per KL Rekhraj JC at p 352:

> On the point of *signing the documents in blank*, there are numerous authorities more particularly *UMW Industries (1985) Sdn Bhd v Kamaruddin bin Abdullah & Anor* [911] MD 2; [1989] 2 CLJ 1278, where the High Court held:

the plea of non ect factum does not avail in favour of a person who has shown himself to be negligent. He has only himself to blame for signing the blank guarantee forms. Again in the case of *Chai Then Song v Malayan United Finance Bhd* [1993] MLJU 128; [1993] 2 CLJ 640, the High Court totally adopted the principle of the above case. It was also held in the case of *Saunders v Anglia Building Society* [1971] AC 1004 that:

A person who signs a document and parts with it so that it may come into other hands, has a responsibility, that of a normal man of prudence, to take care what he signs, which if neglected, prevents him from denying his liability under the document according to its tenor.

[18] In *Chai Then Song*'s case the learned Judge James Foong stated at p 643 as follows:

... A person who chose to be careless, or not bothered to find out the contents therein, or relied completely upon others to complete the same, is responsible for his own actions and he is prevented from denying the contents therein do not bind him. In this case, the appellant never denied that he executed the deed of guarantee nor disputed to the terms therein as not being the terms agreed upon by him ... Though the relevant particulars of the hire purchase agreement was then left blank, this document was at the material time part and parcel of the deed of guarantee and, if the appellant permitted others to fill up the particulars of both these documents, he has to accept full responsibility for such actions.

[19] Based on the authorities cited, I therefore find that it was the plaintiff who was negligent when she purportedly signed the blank forms and she cannot now avail herself with the plea of non ect factum. The other remaining issues raised by the plaintiff accordingly also fall with this.

CONCLUSION

[20] In view of my findings of facts as stated above, I find that the plaintiff has failed to prove her case against the second defendant and I therefore dismiss her suit with costs to be taxed.

Claim dismissed with costs.

Reported by M Sivabarathi